**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE R.BASANT**

**TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929**

**Bail Appl..No. 6553 of 2007()**

**(CRIME NO.318/2007 OF THE KOLLAM EAST POLICE STATION)**

**PETITIONER/5TH ACCUSED:**

**ANAND K., S/O. KRISHNA PILLAI,**
**HIMA HYMATHIL, PEROOR CHERRI, KOTTANKARA VILLAGE,**
**KOLLAM DISTRICT.**

**BY ADV. SRI.C.RAJENDRAN**

**RESPONDENT: COMPLAINANT:**

**STATE OF KERALA,**
**REPRESENTED BY SUB INSPECTOR OF POLICE,**
**KOLLAM EAST POLICE STATION THROUTH THE**
**PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.**

**BY PUBLIC PROSECUTOR SRI. JAI GEORGE**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

*KSS*

**R.BASANT, J**

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**B.A.No. 6553 of 2007**

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Dated this the 30th day of October, 2007

**ORDER**

Application for anticipatory bail. Petitioner is the 5th accused. He along with co-accused face indictment for offences punishable, inter alia, under Sections 326 and 308 read with 149 IPC. Investigation has already been completed. Final report was filed. Cognizance has been taken. Committal proceedings has been registered. The petitioner has not been arrested so far. The petitioner is now selected to the Police force and is undergoing training. The petitioner has not entered appearance before the learned Magistrate so far. He is willing to surrender before the learned Magistrate and seek regular bail but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C, prays the learned counsel for the petitioner.

2. The learned counsel for the petitioner then points out that the petitioner is not named in the F.I.R. The petitioner is known to the de facto complainant from his childhood and he was falsely implicated in this case as 5th accused, submits the learned counsel for the petitioner.

The learned counsel for the petitioner further submits that Annexure A2 petition filed by the de facto complainant before this Court as Crl.M.C.No. 2724/2007 in which he had categorically stated that the petitioner was not guilty of any specific overt act against him. In these circumstances, the petitioner is being arrayed unnecessarily only to vex and harass the petitioner. Hence appropriate directions under Sec.438 Cr.P.C may be issued in favour of the petitioner, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application and submits that the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary course.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. In the facts and circumstances of this case, I am persuaded to agree with the learned counsel for the petitioner and hold that this is a fit case where such extra ordinary equitable discretion under Section 438 can or ought to be issued in favour of the petitioner. In coming to the conclusion, I take note of the fact that the petitioner is known to the de facto complainant and is not named in

the FIR. The fact that the victim had taken the trouble to come to this Court and assert that the petitioner was not involved in any overt act against the de facto complainant does also weigh with me.

5. In the result this petition is allowed. The following directions are issued under Sec.438 Cr.P.C

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 6.11.2007.

ii) He shall be released on regular bail on condition that he execute a bond for Rs.25,000/-(Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(iv) If he were arrested prior to 6.11.07, he shall be released on bail on his executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 6.11.07.

**(R.BASANT, JUDGE)**

sj